

No. 14/13/87-6Lab./708—In pursuance of the provisions of section 17 of the Industrial Disputes Act, 1947 (Central Act No. XIV of 1947), the Governor of Haryana is pleased to publish the following award of Presiding Officer, Industrial Tribunal-cum-Labour Court, Gurgaon in respect of the dispute between the workman and the management of M/s Chief Administrator, Hr. Agri Marketing Board, Panchkula *versus* Sunder Lal.

IN THE COURT OF MRS. ANITA CHAUDHARY, PRESIDING OFFICER, INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, GURGAON

Reference No. 83 of 1988

between

SHRI SUNDER LAL S/O SHRI JUGTA RAM C/O SHRI MAHAVIR TYAGI, ORGANISOR,
INTUC, DELHI ROAD, GURGAON

and

THE MANAGEMENT OF M/S. CHIEF ADMINISTRATOR, HARYANA STATE AGRICULTURAL
MARKETING BOARD, 6/6, PANCHKULA, DISTT. AMBALA (2) ADMINISTRATOR, MARKET
COMMITTEE, GURGAON

Present :

Shri Mahavir Tyagi for the workman.

Shri S. K. Yadav for the management.

AWARD

1. In exercise of the powers conferred by clause (c) of sub-section (i) of Section 10 of the Industrial Disputes Act, 1947 (in short "the Act"), the Governor of Haryana referred the following dispute, *between* the parties, mentioned above, to this Court, for adjudication,—vide Haryana Govt. Labour Deptt. endst No. 18961-67 dated 4th May, 1988 :—

Whether termination of services of Shri Sunder Lal Chowkidar is just and legal ? If not, to what relief is he entitled ?

2. The facts given in the petition are that the petitioner was appointed as a Chowkidar on 4th August, 1975 and his services were illegally terminated by the management on 31st July, 1978 without assigning any reason, neither any wages or compensation or notice was given. No charge-sheet was even given to the petitioner.

3. The respondent filed its written statement and took up the plea that the management was not an industry and the petitioner was not a workman and therefore, the reference was bad. A plea was also taken that the claim was barred by time and laches. It was pleaded that as per record available, the petitioner was appointed as Chowkidar in August, 1975 on *ad hoc* basis for a temporary period on daily wages till the vacancy was filled in through proper froum. His services were terminated in 1978 as per specific agreement and the petitioner was not entitled to any relief.

4. In the application, contents of the written statement were controverted, while those of the claim statement were reiterated.

5. On the pleadings following issue was framed :—

Whether termination of services of Shri Sunder Lal Chowkidar is just and legal ? If not, to what relief is he entitled ?

6. I have heard authorised representatives of the parties. My finding on the issue framed is as under :—

7. The management was called upon to lead there evidence first and they have examined Bala Ram, Mandi Supervisor, as MW1, who deposed that according to the record Sunder Lal S/o Jugta Ram had never worked with the management. It was pleaded that he did not have any personal file or any other record as the record was destroyed after three years.

8. On the other hand, the petitioner has stepped into the witness box as WW1. He deposed that he was working as Chowkidar with the respondent w.e.f. 4th August, 1975 and his services were illegally terminated on 31st July, 1978 and he was not paid any compensation. It was stated that he had sent a copy of the demand notice to the management. He proved its receipt Ex W1, copy of the demand notice Ex. W2. Shadi Lal, retired Executive Officer WW2 stated that he had worked in the Market Committee Gurgaon from 1974 to 1977 and the petitioner had worked in the year 1975 and a resolution had been passed by the Committee. In the cross examination, he stated that he had made statement on the basis of his memory and did not have any record with him.

Bala Ram, Mandi Supervisor, WW3 stated that he had brought the record, which was available and according to it, the petitioner was employed on 4th August, 1975 and his services were removed on 4th November, 1975 and he had worked from 7th November, 1975 to 7th February, 1976, 3rd March, 1976 to 31st July, 1978 and they had sent a report to the Chief Administrator on 26th August, 1988 a copy of which was Ex. W3.

9. The stand taken by the management in the written statement was that the petitioner was working as a Chowkidar on daily wages from August, 1975 till 1978. A plea had also been raised that petitioner was not entitled to any relief and his claim was time barred on account of delay and laches. While MW1 had stated that no person by the name of Sunder Lal S/o Jugta Ram was working in their department and no record was available as the same had been destroyed. This statement was contrary to the stand, which was taken in the written statement. The workman then summoned the record and Bala Ram was again examined as WW3 by my learned predecessor on 26th October, 1993 and it was here that it was disclosed that the petitioner had worked for a certain period. The detail has already been given above. According to the management a brief summary was prepared on 26th August, 1988 and the same was sent to the Chief Administrator, Haryana State Agriculture Marketing Board, Panchkula. Copy of the same is Ex. W-3, which shows that the total number of days, this workman had worked comes to 1087.

10. No doubt, the petitioner had approached for relief after a gap of nearly ten years, but at the same time, the Parliament had not thought it proper to prescribe the period of limitation and the Court cannot impose an implied limitation within which the employee can bring the matter before a proper adjudicatory forum. It has been held in the Executive Engineer, Irrigation Division-1, Jaipur *Versus* Nar Narain 1994 LLR page 538 that "while exercising this discretionary power, the Labour Court/Industrial Tribunal has a right to deny full relief to the workman once it finds that there was abnormal delay on the part of the workman in initiating the dispute".

11. In this case, workman had worked for a period of 1087 days from 1975 to 1978 with short breaks. It does not appear that the services were terminated on completion of the work assigned. This mode was adopted simply to deprive the benefits which accrue to a person on account of his long service has been the subject matter of enquiry before various judicial forums. At times it has been found that this device is employed i.e. of giving employment for a particular period and again for identical period after a gap of about 5-6 days so as to disrupt the continuity of his service. The Courts after examining the facts of a particular case at times have held to be an unfair practice. The management has been unable to bring any material on file to show that the work and conduct of the workman was unsatisfactory. No notice or chargesheet was served upon the workman. The management did not even comply with the provisions contained in Section 25 F of the I.D. Act, therefore, termination in this case is held to be illegal.

12. The question which would next arise is as to whether the petitioner is entitled to full back wages since he had approached the appropriate forum after a gap of ten years. After termination of services of the workman in 1978, the workman did not even make any representation. He was hardly vigilant about prosecuting his case before the appropriate forum for redressal of his grievance, therefore, this Court has to take his factor into consideration and other relevant circumstances while awarding back wages. I am of the view that since there is a gross delay of ten years as the demand notice was only given in January 1988, the petitioner is entitled to back wages from the date of demand notice. Consequently, the petitioner is reinstated with back wages from the date of demand notice i.e. 18th January, 1988. However, his reinstatement shall have the benefit of continuity of service and other attendant benefits if any. Reference is answered accordingly with no order as to costs.

The 19th September, 1994

ANITA CHAUDHARY,
Presiding Officer,
Industrial Tribunal-cum-Labour Court,
Gurgaon.

Endst. No. 1450 The 30th September, 1994

For forwarded (four copies) to the Secretary to Govt. Haryana Labour & Employment Departments, Chandigarh under Section 15 of the Industrial Disputes Act, 1947.

ANITA CHAUDHARY,
Presiding Officer,
Industrial Tribunal-cum-Labour Court,
Gurgaon.